

Mr. Verne Walton

July 23, 1985

Barbara G. Elbrecht

Change of Ownership, Alpha Hardware and Supply Company;
Sierra County Sample 136 - [REDACTED] Mine

This is in response to your memorandum of June 18, 1985, directed to Mr. Richard Ochsner regarding a change in ownership of the [REDACTED] Company. You have attached copies of data relating the history of transactions dealing with the ownership of the [REDACTED] Mine and have asked that we review the data provided and inform you of the proper reappraisal date/base year(s) in effect as of lien date March 1, 1984.

You have provided the following documents with your memorandum: a Prospectus for the sale of shares in the [REDACTED] Mining and Development Co., Inc., dated April 15, 1984; the Annual Report of [REDACTED] Mining and Development Co., Inc., for the year ending January 31, 1985; a Stock Purchase Agreement and Promissory Note between Fred [REDACTED] and K [REDACTED] Inc., dated December 5, 1980; and an Agreement for Sale of [REDACTED] Stock and Agreement for Repurchase of [REDACTED] Stock, dated May 5, 1982.

During the period of time covered by the documents you have provided, there were ten transactions which might constitute changes in ownership of the [REDACTED] Mine. The first five transactions deal with the lease of the mine and are summarized as follows:

1. The [REDACTED] Mine consists of 8 patented and 39 unpatented mining claims in Sierra County. The mine is owned by [REDACTED] ("Alpha"), a California corporation. Alpha entered into a master lease of the mine on October 15, 1981 with K [REDACTED] M [REDACTED] U.S., Inc.

July 23, 1965

"K" "K"
("K"), a Delaware Corporation. Kenrell is a subsidiary of K R, Inc., ("K B.C."), a British Columbia Corporation. The term of the lease was from October 20, 1981, to October 20, 1999.

K
2. in turn sublet the mine on October 20, 1981 to Timothy, individually and as a general partner of the Mining Company ("the Partnership"), a California limited partnership. The term of the sublease expired on October 19, 1999. The facts do not make clear the extent to which Mr. entered into the lease on his own behalf and on behalf of the Partnership.

3. On April 15, 1982, the Partnership incorporated and transferred all of its assets, including mining rights, to the Mining and Development Co., Inc. ("the Company"), a Nevada corporation, in exchange for the Company's assumption of all of the liabilities of the Partnership and the issuance of 24,050,000 shares of the Company's common stock. This assignment transferred to the Company the Partnership's rights as lessee of the mine from Kenrell.

Timothy
4. On April 25, 1982, transferred and assigned his interest in the sublease to the Company in exchange for 2,975,000 shares of the Company's common stock.

5. To clarify the true intent of the parties to the above transactions, an agreement to terminate all prior leases and subleases was made on October 7, 1982 by Alpha, K, the Partnership, Timothy, and the Company. At the same time, a direct lease of the mine was entered into by Alpha, K, and the Company for a lease term expiring October 20, 1999.

Comment: It has been our position that a lease of a mining right for a specific term of years is governed by the general lease provisions of Revenue and Taxation Code (all section references herein unless otherwise specified are to the Revenue and Taxation Code) section 61(c) rather than section 61(a), which deals with change in ownership of mineral rights for an indefinite term (for so long as the mineral can be produced in paying quantities). Section 61(c) states that a

July 23, 1985

change in ownership includes the creation, termination, or transfer of a leasehold interest for a term of 35 years or more.

All of the five transactions listed above involving the lease of the mine are for terms of less than 35 years. Therefore, the transactions do not constitute a change in ownership of the mine under the provisions of section 61(c).

The next five transactions involve transfers of ownership interests in Alpha, the corporation which owns the mine. Because of the complexity of the transactions, each transaction will be described and analyzed separately for change in ownership implications.

1. In 1980 and 1981, K██████ B.C. entered into a series of stock purchase agreements with the shareholders of Alpha. Five stock purchase agreements for a total of 37,404 shares (or 92 percent of the outstanding shares) of Alpha were entered into on December 5, 1980; a sixth agreement for 500 shares was entered into on September 30, 1981. The total acquisition of 37,904 shares equalled 93 percent of the shares of Alpha.

The terms of the 1980 agreements called for a cash downpayment on the date of the agreements, plus four equal annual installment payments. The shares to be purchased were to be held in escrow accounts until the final installment payment of December 5, 1984, was made.

On December 5, 1980, agreements granted to K██████ B.C. immediate irrevocable proxies from the Alpha shareholders to vote the shares to be purchased as long as K██████ B.C. met the terms of the agreement. (No information has been provided about the September 30, 1981 agreement.) The 1980 agreements also called for the immediate resignation of Alpha's existing officers and directors to be replaced by those elected by K██████ B.C.

Comment: This transaction raises the issue of whether the granting of irrevocable stock proxies transferring stock voting rights without an accompanying transfer of ownership

July 23, 1985

interests constitutes a change in ownership of the real property owned by the corporation. This question was addressed in a memorandum dated February 20, 1985, directed to you from Mr. Richard Ochsner. That memorandum sets forth the policy that once it is established that irrevocable proxies have been validly granted, the granting of irrevocable proxies for more than 50 percent of the voting stock in a corporation constitutes a change in ownership of the real property owned by the corporation under section 64(c). A change in ownership occurs because the right to vote more than 50 percent of the shares confers the power to elect a majority of the board of directors of the corporation and thus control the corporation.

As stated in Mr. Ochsner's memorandum, Corporations Code, section 705(e) states that "a person who has purchased or agreed to purchase ... shares in the corporation" can hold an irrevocable proxy. Therefore, the irrevocable proxies granted by Alpha to ████████ B.C. appear to be valid because ████████ B.C. was a purchaser of the shares for which the proxies were granted. Since ████████ B.C. was granted irrevocable proxies for 92 percent of Alpha's shares, ████████ B.C. thereby acquired control of Alpha. Further evidence of ████████ B.C.'s control of Alpha is provided by the provision in the stock purchase agreement which requires that the existing Alpha officers and directors immediately resign as of the date of the agreement to be replaced by those elected by ████████ B.C. Accordingly, under section 64(c), a change in ownership of the real property owned by Alpha occurred as of December 5, 1980, the date of the above-described agreement.

2. At some point between December 5, 1980 and May 5, 1982, ████████ B.C. apparently transferred its interest in Alpha to its subsidiary, ████████. This is deduced from the fact that in May, 1982, Kenrell (and not ████████ B.C.) entered into a contract which transferred ████████ B.C.'s interest in Alpha. No information has been provided regarding the transfer of ████████ B.C.'s rights in Alpha to ████████.

Comment: This transfer of ████████ B.C.'s rights in Alpha's stock to its subsidiary did not constitute a change in ownership. Although little is known about this transfer, it appears to be a transfer of an interest in a corporation between a parent and its subsidiary, and therefore is excluded under section 64(b) as a transfer between affiliated corporations.

July 23, 1985

3. On May 5, 1982, ████████ (██████ B.C. having apparently transferred its interest in Alpha to its subsidiary, ████████) entered into an agreement with the Company to sell the shares of Alpha being purchased by ████████ B.C. The Company agreed to pay Kenrell \$350,291 (the price ████████ B.C. paid Alpha) for the shares of Alpha; in addition, it issued ████████ 2,500,000 shares of its common stock and granted Kenrell the option to require the Company to repurchase the shares at \$0.15 per share, or the total sum of \$375,000, within 60 days of ████████'s transfer of the shares of Alpha to the Company.

In the May 1982 agreement, ████████ agreed to "conduct Alpha business in a manner generally acceptable for closely held corporations, properly managed." ████████ further agreed "to exercise its rights to vote the shares of Alpha in a manner consistent with this agreement and in a manner consistent with the mining sublease previously granted to ████████ Creek" (██████-██████ Agreement, p. 5). The agreement also states that it is not to be construed as a present assignment of Kenrell's right to acquire the Alpha shares which Kenrell is still purchasing, but rather that it is an executory agreement whereby ████████ "promises to transfer the shares to Brush Creek at the time that the escrows are consummated and title to the shares passes to ████████" (██████-██████ Creek Agreement, p. 6).

Comment: This agreement of May 5, 1982 requires Kenrell to vote the proxies it holds for the Alpha shares being purchased "in a manner consistent with the mining sublease previously granted to [the Company]." While this shows a promise to protect the Company's interest in the mine, it does not demonstrate a transfer of voting rights from ████████ to the Company. ████████ still retained the power to vote more than 50 percent of the stock and thereby to control Alpha. Therefore, no change in ownership under section 64(c) occurred under the May 5, 1982 agreement.

4. On February 7, 1984, ████████ assigned to the Company all of ████████'s right, title, and interest in Alpha's 93 percent (37,904 shares) of Alpha.

July 23, 1985

Comment: Since the assignment of all of ~~Kenneth~~'s rights apparently included the assignment of its irrevocable proxies, by this assignment the Company acquired the control of Alpha previously held by ~~Kenneth~~. The Company, as purchaser of the shares, fell into the class of persons or entities entitled to hold irrevocable proxies enumerated in section 705(e) of the Corporations Code. Because the Company now had the power to vote 93 percent of the shares, a change in ownership under section 64(c) as discussed above occurred.

5. The final transaction involving ownership interests in Alpha presumably occurred in December, 1984, when ~~Kenneth~~ completed its purchase of Alpha stock and transferred the ownership of the shares to the Company, as promised in the ~~Kenneth~~-Company agreement of May 5, 1982. Since we have no documentation after April, 1984, we have no knowledge of whether the purchase of Alpha stock was completed as scheduled.

Comment: Since the Company was already exercising voting control of Alpha, the acquisition of ownership interests in Alpha would not have any effect upon the control of the corporation. Therefore, there would not be a change in ownership under section 64(c) when ~~Kenneth~~ acquired actual ownership of the Alpha stock and transferred it to the Company.

To summarize the transactions listed above, the granting of the mining leases did not constitute a change in ownership. However, the granting of voting rights of more than 50 percent of the shares of Alpha by the Alpha-~~Kenneth~~ agreement of December 5, 1980 and by the ~~Kenneth~~-Company agreement of February 7, 1984 each constituted a change in control within the meaning of section 64(c). Therefore, changes in ownership of the real property owned by Alpha occurred on December 5, 1980 and February 7, 1984.

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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson